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By: **Delegates Morhaim and Weldon**

Introduced and read first time: January 29, 2004

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Alternative Dispute Resolution Pilot Program**

3 FOR the purpose of requiring the primary procurement units to develop, implement,  
4 and administer an alternative dispute resolution pilot program for construction  
5 contract claims; declaring that the policy of the State is to encourage the use of  
6 alternative methods of dispute resolution to resolve procurement claims and  
7 disputes; authorizing the use of nonbinding mediation under the pilot program;  
8 authorizing certain parties to mediate during a certain time period if both  
9 parties agree; requiring certain parties to mediate at the discretion of the  
10 contractor after a certain time period has expired; requiring the Office of the  
11 Attorney General to establish and maintain a list of certain mediators;  
12 establishing procedures for the selection of a mediator under the pilot program;  
13 requiring the costs of mediation to be shared equally between the parties;  
14 requiring the Attorney General, in consultation with the primary procurement  
15 units, to report to the Governor and the General Assembly on or before a certain  
16 date; providing for the termination of this Act; and generally relating to the  
17 alternative dispute resolution pilot program for construction contract claims.

18 BY adding to  
19 Article - State Finance and Procurement  
20 Section 15-224  
21 Annotated Code of Maryland  
22 (2001 Replacement Volume and 2003 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - State Finance and Procurement**

26 15-224.

27 (A) IT IS THE DECLARED POLICY OF THE STATE TO ENCOURAGE TO THE  
28 MAXIMUM EXTENT PRACTICABLE THE USE OF ALTERNATIVE METHODS OF DISPUTE  
29 RESOLUTION TO RESOLVE PROCUREMENT CLAIMS AND DISPUTES.

1 (B) THE PRIMARY PROCUREMENT UNITS SHALL DEVELOP, IMPLEMENT, AND  
2 ADMINISTER AN ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM, FOR THE  
3 RESOLUTION OF CLAIMS UNDER PROCUREMENT CONTRACTS FOR CONSTRUCTION,  
4 UNDER GUIDELINES ESTABLISHED UNDER SUBSECTION (D) OF THIS SECTION.

5 (C) THE PILOT PROGRAM SHALL APPLY ONLY TO CONSTRUCTION CONTRACT  
6 CLAIMS.

7 (D) (1) TO RESOLVE CONSTRUCTION CONTRACT CLAIMS, THE PILOT  
8 PROGRAM SHALL AUTHORIZE THE USE OF NONBINDING MEDIATION, UNLESS THE  
9 PARTIES OTHERWISE AGREE.

10 (2) THE PARTIES TO A CONTRACT:

11 (I) BEFORE THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED  
12 OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A  
13 RESOLUTION UNDER § 15-219(D) OF THIS SUBTITLE, MAY MEDIATE IF BOTH PARTIES  
14 AGREE; OR

15 (II) AFTER THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED  
16 OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A  
17 RESOLUTION, SHALL MEDIATE AT THE DISCRETION OF THE CONTRACTOR.

18 (3) THE OFFICE OF THE ATTORNEY GENERAL SHALL ESTABLISH AND  
19 MAINTAIN A LIST OF MEDIATORS QUALIFIED TO MEDIATE A CONSTRUCTION  
20 CONTRACT CLAIM.

21 (4) IF MEDIATION IS USED TO RESOLVE A CLAIM UNDER THIS SECTION,  
22 THE MEDIATOR SHALL BE:

23 (I) AGREED TO BY THE INTERESTED PARTIES; OR

24 (II) CHOSEN BY THE CONTRACTOR FROM A LIST OF THREE  
25 MEDIATORS PROVIDED BY THE ATTORNEY GENERAL FROM THE ROSTER OF  
26 QUALIFIED MEDIATORS ESTABLISHED UNDER PARAGRAPH (3) OF THIS SUBSECTION.

27 (5) THE COSTS OF A MEDIATION SHALL BE SHARED EQUALLY BETWEEN  
28 THE INTERESTED PARTIES.

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
30 General, in consultation with the primary procurement units, shall report on or  
31 before January 1, 2006 to the Governor and, in accordance with § 2-1246 of the State  
32 Government Article, the General Assembly, on the effectiveness and fiscal impact of,  
33 and recommendations about, the alternative dispute resolution pilot program  
34 established under Section 1 of this Act. The report shall include a statistical analysis  
35 of the size of each case and the types of cases mediated, the outcome of any  
36 alternative dispute resolution proceedings, and an estimate of any cost savings or  
37 additional costs resulting from the alternative dispute resolution process.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2004. It shall remain effective for a period of 2 years and, at the end of  
3 September 30, 2006, with no further action required by the General Assembly, this  
4 Act shall be abrogated and of no further force and effect.